

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

06-CR-6077L

v.

HOWARD DENNIS KELLY,

Defendant.

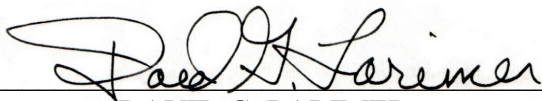
Defendant, Howard Dennis Kelly (“Kelly”), was convicted after trial on January 7, 2008 of escape, 18 U.S.C. § 876. Although Kelly was and is represented by counsel, he has filed three motions, *pro se*. Because Kelly is represented by counsel, the Court has no obligation to deal with such *pro se* motions. Because Kelly is scheduled for sentencing within a few weeks, I will deal with these *pro se* motions in order to conclude matters in the district court.

In Kelly’s first *pro se* motion (Dkt. #91), he moves for acquittal pursuant to FED. R. CRIM. P. 29 on the grounds that there was insufficient evidence to convict him. The motion is denied. Kelly is essentially rearguing matters that were raised and argued at trial. The evidence certainly was sufficient to convict Kelly of the escape charge and there is no basis to overturn the jury’s verdict.

Kelly's second *pro se* motion (Dkt. #92) seeks to set aside the jury verdict "in the interest of justice." The motion is denied. Essentially, Kelly challenges some of the Court's rulings at trial and makes other unsubstantiated claims. There is no basis in fact or law to grant Kelly's motion.

Kelly's third *pro se* motion (Dkt. #93) is not a motion but simply Kelly's statement that he intends to appeal. Kelly's stated intent to appeal is no surprise. At sentencing the Court will follow proper procedures to make sure that Kelly's right to appeal the jury's verdict and the Court's sentence is preserved. This third *pro se* motion, to the extent it is a motion, is also denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
April 15, 2008.